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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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118 06/28/00 GULJANO

R VENPROO.007C

EXAMINER

QM12/0123

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PELLEGRINO, R

ART UNIT

PAPER NUMBER

3738

DATE MAILED:

01/23/01

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find below and/or attached an Office communication concerning this application or  
ding.

Commissioner of Patents and Trademarks

# Office Action Summary

Applicati n No.

09/605,118

Applicant(s)

QUIJANO ET AL.

Examiner

Brian E Pellegrino

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.

- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

**BRUCE SNOW**  
**PRIMARY EXAMINER**

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over of Quijano et al. (5500014) in view of Herweck et al. (5197976). Quijano et al. teach that valvular prostheses can be formed with a biological valve for defective blood vessels, col. 5, lines 10-15. Quijano et al. also teach that valved conduits are needed to repair larger vessels, col. 14, lines 51-59 and can be modified to meet the requirements of the vessel to be repaired. However, Quijano et al. fail to teach to join the valved conduits together to form an inflow end having a greater cross-section than the conduit's inflow end. Herweck et al. teach to join two conduits together at adjacent inflow ends (Figs. 4 and 6A) forming a vascular prosthetic where the joined end has a cross-sectional area larger than any of the inflow ends of the conduits. Herweck et al. teach that the two ends can be joined to form one lumen, col. 2, lines 40-42. It would have been obvious to one of ordinary skill in the art to modify the valved conduits of Quijano et al. and use the teaching of Herweck et al. to join two conduits to form a vascular prosthesis since larger blood vessels require a larger diameter for the blood flow.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 30 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 24 of U.S. Patent No. 6110201. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims recite having two valvular conduits with biological valves therein joined together at one end forming a larger end with a cross-sectional area greater than a cross-sectional area of either of the two joined segments.

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Yang et al. (5989287) teach that two conduits with at least one valved vessel, can be joined together, thereby producing a greater cross-sectional area.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Pellegrino whose telephone number is (703) 306-5899. The examiner can normally be reached on Monday-Thursday from 8am to 5:30pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at (703) 308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-2708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
Brian E. Pellegrino  
January 19, 2000

  
Bruce Snow  
Primary Examiner  
TC 3700, AU 3738